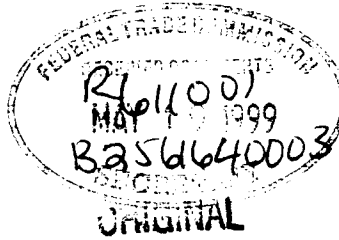


May 12, 1999

Mercedes Kelley
Division of Marketing Practices
Federal Trade Commission
6th Street & Pennsylvania Ave.
Washington, DC 20580



CERTIFIED MAIL
SIGNATURE REQUESTED

Re: **16 CFR Part 453**

Funeral reform is an ongoing job. Consumers will always be vulnerable, and some funeral homes will take advantage if they can. The Funeral Rule (as amended in 1994) eased the pain for many families. The amended rule, with its ban on casket handling fees, made it possible for casket stores competition. The consumer finally had a choice. This should be the happy end of the story. It is not!

The NFDA devised a way to defeat the ban on casket handling fees. NFDA counsel Gilligan taught member funeral homes to inflate the funeral service price and then offer a "discount" to those who bought a casket from the funeral home. The word "discount" is a magic word in our society. The NFDA "discount package" has fooled a lot of well meaning people. . . even the court. They overlooked the fact that **"a legitimate discount is a reduction from the usual price"**. The NFDA "discount package" starts with an **inflated** fictitious price. I believe that the NFDA "discount package" is a deceptive trade practice, and that those funeral homes that have followed the NFDA Guidelines are in violation of the anti-trust laws.

. The following is a part of page 6 of the NFDA *"Guidelines for Handling Third Party Caskets"*

4. Unreasonable Discounts While funeral homes are free to offer discounted packages to encourage families to select a casket from the funeral home, they may not make the discounts **unreasonable**. For example, if a funeral home raised its itemized prices for a typical funeral home to \$10,000 and then offered a \$3,000 funeral package to consumers purchasing a casket from the funeral home, it would open itself up to a claim that it is employing sham discounts. The amount of the discount should have some reasonable relationship to the revenue the funeral home would expect to earn on the sale of the casket.

How can a "legitimate discount" be too big or "unreasonable"? Why is the "discount package" only used in areas where there are casket stores? There is nothing reasonable about a predatory tactic. This is a thinly disguised scheme to eliminate casket store competition. And it worked in Utah. The Utah Funeral Directors put Dave Cook out of business on April 3, 1998 by following the NFDA and Gilligan's guidelines. The phony "discount package" **offers no savings** to the consumer. It locks in the casket sale for the funeral home. Do you pay more for a the car if you don't buy the CD player from the dealer? Do you pay more for a TV if you don't buy the stand? The consumer pays more for a funeral with the "discount package".

The vulnerable consumer needs choice. The funeral home has possession of the deceased. One-stop shopping is easier. All things being equal the funeral home will sell the casket. But all things are not equal. The funeral home historically charges an outrageous price for the casket. Funeral homes vigorously oppose competition on casket pricing for obvious reasons. The funeral industry is also pushing for State laws that restrict casket sales to licensed funeral directors. The funeral industry is frantic to eliminate competition. There's a lot of grieving dollars at stake. The vulnerable consumer needs the benefit of ongoing protection.

"The funeral service must cost the same regardless of where the casket is purchased."

National Casket Retailers Association & Impressive Casket, Inc.


Maynard Cheris